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8 UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
9 AT TACOMA

10 JUAN T.,

11 Plaintiff,

12 v.

13 COMMISSIONER OF SOCIAL
14 SECURITY,

15 Defendant.

CASE NO. 19-105 RJB-MLP

ORDER ADOPTING REPORT AND
RECOMMENDATION

16 THIS MATTER comes before the Court on the Report and Recommendation of U.S.
17 Magistrate Judge Michelle L. Peterson. Dkt. 18. The Court has considered the Report and
18 Recommendation, objections to the Report and Recommendation, the response to the objections
19 and the remaining record.

20 On July 26, 2019, the Report and Recommendation was filed, recommending that the
21 decision of the Commissioner, to deny the Plaintiff Social Security Disability Insurance benefits,
22 be upheld. Dkt. 18. The Plaintiff filed objections, arguing that the Court should not adopt the
23 Report and Recommendation because the ALJ erred when she rejected the opinions of
24 examining doctors Victoria McDuffee, Ph.D., Kathleen Anderson, M.D., and Dana Harmon,

1 Ph.D. Dkt. 19. The Plaintiff asserts that the: (1) ALJ erred in finding that the opinions at issue
2 were inconsistent with longitudinal examination findings in the treatment notes and group
3 therapy notes and the Report and Recommendation minimizes the ALJ's error in the finding, (2)
4 the fact that the Plaintiff has flares of (more intense) symptoms is not grounds to reject the
5 opinions at issue, (3) there is no evidence that the Plaintiff was non-compliant with his
6 medication at the time of the evaluations, (4) the ALJ's reasons for rejecting the individual
7 opinions of Dr. McDuffee and Dr. Anderson was in error.

8 The Report and Recommendation (Dkt. 18) should be adopted. The Plaintiff's objection,
9 that the ALJ failed to properly consider all relevant evidence in the medical records (of
10 Plaintiff's abnormal mood and isolation behaviors) and group therapy notes (indicating he was
11 having difficulties) when he found that Drs. McDuffee, Anderson, and Harmon's opinions were
12 inconsistent with the longitudinal examination findings in the treatment notes and group therapy
13 notes, do not provide a basis to reject the Report and Recommendation. "The ALJ is responsible
14 for resolving conflicts in the medical record." *Carmickle v. Comm'r, Soc. Sec. Admin.*, 533 F.3d
15 1155, 1164 (9th Cir. 2008). "Where the evidence is susceptible to more than one rational
16 interpretation, one of which supports the ALJ's decision, the ALJ's conclusion must be upheld."
17 *Thomas v. Barnhart*, 278 F.3d 947, 954 (9th Cir. 2002). As stated in the Report and
18 Recommendation, the ALJ properly weighed the evidence and resolved the conflicts in the
19 record. The medical evidence is susceptible to more than one rational interpretation, so the
20 ALJ's conclusions must be upheld. *Thomas*, at 954.

21 The Plaintiff's objection, that he has more intense symptoms at times was not a reason to
22 reject Drs. McDuffee, Anderson, and Harmon's opinions, is not a ground to reject the Report and
23 Recommendation. The Report and Recommendation properly notes that the ALJ did
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1 acknowledge abnormal findings in the record, but found that they were not necessarily indicative
2 of his baseline level of functioning as reported in the opinions at issue. Further, again, it is the
3 ALJ that is to resolve conflicts in the medical record, and this Court will not substitute its'
4 judgment for the ALJ's judgment.

5 The Plaintiff objects and argues that there is no evidence that the Plaintiff was non-
6 compliant with his medications at the time the three doctors saw him, and so, the ALJ should not
7 have rejected the three doctors' opinions on the grounds that their opinions were inconsistent
8 with the longitudinal record that showed that his symptoms improve when he is compliant with
9 medications and not using alcohol. This objection does not provide a basis to reject the Report
10 and Recommendation. The Report and Recommendation properly notes that even were it
11 possible to determine whether the Plaintiff was medication compliant and not using alcohol at
12 the time of the examinations, the ALJ's finding that their opinions conflicted with the record and
13 his rational interpretation of the evidence which supports his decision, must be upheld.

14 The Plaintiff's objection, that the ALJ erred in rejecting Dr. McDuffee's opinion because
15 it was internally inconsistent, is not a basis to reject the Report and Recommendation. The ALJ
16 noted that Dr. McDuffee found that the Plaintiff had only mild cognitive impairment, but then
17 opined that he had significant limitations. As stated in the Report and Recommendation, it is the
18 role of the ALJ to weigh conflicting medical evidence. The ALJ's conclusion, that the internally
19 inconsistent nature of Dr. McDuffee's opinion undermined the entire opinion is not error.

20 The Plaintiff objects to the Report and Recommendation's recommendation that the
21 Court find that the ALJ properly considered Dr. Anderson's opinion. The Plaintiff argues that
22 the ALJ erred when he found that the Plaintiff's presentation during Dr. Anderson's examination
23 was in stark contrast to his presentation during other appointments around that time. The
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1 Plaintiff asserts that there is medical evidence that the Plaintiff was demonstrating abnormal
2 behaviors and that the ALJ failed to address these findings in the medical record. This does not
3 provide a basis to reject the Report and Recommendation. The Report and Recommendation
4 properly points out that there was a conflict in the medical record at this time: while the Plaintiff
5 was exhibiting abnormal behaviors, the ALJ noted that the treating providers found that typically
6 those behaviors were milder than those noted by Dr. Anderson. Further, the Report and
7 Recommendation noted that the ALJ discounted Dr. Anderson's opinion for several other
8 reasons.


9 The Report and Recommendation (Dkt. 18) should be adopted and the case dismissed.
10 The ALJ provided specific and legitimate reasons, supported by substantial evidence in the
11 record to reject the medical opinions at issue here. The Commissioner's decision should be
12 affirmed.

13 It is **ORDERED** that:

- 14 • The Report and Recommendation (Dkt. 18) **IS ADOPTED**;
- 15 • The Commissioner's decision **IS AFFIRMED**; and
- 16 • This case **IS DISMISSED**.

17 The Clerk is directed to send uncertified copies of this Order to U.S. Magistrate Judge
18 Michelle L. Peterson, all counsel of record, and to any party appearing *pro se* at said party's last
19 known address.

20 Dated this 26th day of August, 2019.

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22 ROBERT J. BRYAN
23 United States District Judge
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